Municipal Affairs and Housing

Municipal Councillors' Guidelines for Conflict of Interest

Alberta

Alberta Municipal Affairs and Housing (2007) *Municipal Councillors' Guidelines for Conflict of Interest*
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Alberta's municipal councillors have a strong record of public service to their communities. As a public servant, you are responsible for upholding the public interest ahead of any private interests you may have.

Read part 5 of the *Municipal Government Act* (MGA) to learn what is expected of you.

This document is only a guide to the legislation. Consult your solicitor for advice on specific situations.

Disqualification

Section 174 of the MGA describes the reasons for disqualification from council.

Nomination

First of all, if you never were, or cease to be qualified to be nominated as a candidate for council, then you are not qualified to remain a member of the council (see sections 21 to 23 and 47 of the *Local Authorities Election Act*).

To remain qualified you must:

- retain Canadian citizenship
- continue to reside in the municipality (and in a rural municipality, reside in electoral division)
- not be appointed as the auditor, an officer or employee of the municipality
- keep your tax and other accounts with the municipality paid up.

Attendance

Section 174 of the MGA says that if you are absent from all the regular meetings of the council for an eight-week period, you are not qualified to remain a member of council.

The council may approve your absence for a longer period of time. To do so, they must pass a resolution before the close of the last meeting in the eight-week period.

Suppose the first regular meeting which you missed was on the Tuesday of week one. Not later than the Tuesday of week eight, you would either have to attend a regular council meeting or arrange to have the council pass a resolution authorizing your absence. If, for any reason, the last regular meeting at which the resolution could be passed is not held, then the resolution may be passed at the next regular meeting of the council.

Participating in the decision-making process at council meetings is a very important part of your commitment. Your electors have a right to expect that you will attend council meetings, present your views, and vote.

Conviction for an Offence

Section 174 of the MGA states that if you are convicted of an offence punishable by imprisonment for five years or more, or an offence under section 123, 124 or 125 of the *Criminal Code* (Canada), you are not qualified to remain a member of the council.
Your electors have a right to expect that you will be a responsible member of society. If you are convicted of a serious offence, it may well raise questions about whether you can provide suitable representation for the municipality.

Pecuniary Interest

Definition

Section 170 of the MGA describes pecuniary interest as something which could monetarily affect you, your spouse, or adult interdependent partner, or children, your parents or the parents of your spouse (in other words, your immediate family), or a business which employs you or in which you have an interest.

Specifically, pecuniary interest means an interest in a matter which could monetarily affect:

- you
- a corporation, other than a distributing corporation, in which you are a shareholder, director or officer
- a distributing corporation in which you beneficially own voting shares carrying at least 10% of the voting rights attached to the voting shares of the corporation or of which you are a director or officer
- a partnership or firm of which you are a member.

This section also says that "a councillor has a pecuniary interest in a matter if (a) the matter could monetarily affect the councillor or an employer of the councillor, or (b) the councillor knows or should know that the matter could monetarily affect the councillor's family." You must decide when you have a pecuniary interest. Council cannot make the decision for you.

Section 172 of the MGA sets out the procedure you must follow if a matter in which you have a pecuniary interest comes before any meeting in which you are taking part in your capacity as a member of council. Failure to follow these procedures could lead to your disqualification.

Exceptions

Several exceptions are listed in section 170(3) of the MGA so that an overly-restrictive interpretation of the provisions will not disrupt the affairs of the municipality or your function as a councillor. See the Appendix for section 170(3).

What to Do

Section 172 of the MGA says that you may not take part in the decision-making on any matter in which you have a pecuniary interest. The legislation attempts to ensure that you are not discriminated either for or against by virtue of your membership on the council

If you have a pecuniary interest:

- you are to disclose that you have an interest and its general nature
- you are to abstain from any discussion of the matter and from voting
- you are to leave the room until the matter has been dealt with, and
- you should make sure that your abstention is recorded in the minutes.

For example, you might say "Mr. Mayor, I am abstaining on this matter because I am a shareholder in the company. I am leaving the room and I ask that my abstention be recorded."

If the matter is one in which you, as an elector or property owner, have a right to be heard by

council (for example, a land use bylaw amendment, lane or street closure, etc.), you are to disclose your interest and abstain, but you may remain in the room to be heard by council in the same manner as any person who is not a member of the council. In this case, you should follow the procedure required of any other person to be placed on the list of delegations to be heard by the council. When the matter comes up for hearing, you might say "Madam Mayor, I am abstaining from this matter because I own the property affected. I ask that my abstention be recorded."

You should then leave the council table and go to the area where the public sits. The mayor should call you to make your presentation in the same manner as any other person. You should state your case, answer any questions that may be posed to you and then be seated for the remainder of the public hearing.

When the council debates the matter it would be advisable to leave the room during the decision-making process.

Temporary Absence

On occasion, you may be temporarily absent from a meeting when a matter in which you have an interest comes up for discussion. If so, upon returning to the meeting, or as soon as you discover that the matter was discussed, you are to disclose the general nature of your interest. Make sure that the secretary notes your disclosure in the minutes.

The purpose of this provision is to ensure that a member of council does not avoid disclosing an interest by simply leaving the meeting before the matter is discussed and returning after the discussion is complete. If some matter is discussed by council while you are temporarily absent from a meeting, upon your return and as soon as you become aware of the matter, you should get the attention of the chair and say something like "Mr. Mayor, during my absence a matter was discussed in which I have an interest. I am disclosing that my husband is an employee of the company and I ask that my disclosure be recorded in the minutes."

All Meetings

The disclosure and abstention rules apply to every meeting of council and any of its committees. They also apply to you at a meeting of any board, committee or agency to which you are appointed as a representative of the council (section 172(6) of the MGA). In other words, any time that you are acting as a councillor, the disclosure and abstention rules apply to you.

It is important to remember to ask the secretary at any of these meetings to record your abstention and to check that it is actually included in the minutes.

Doing Business

Although there is no prohibition on doing business with the municipality when you are a member of council, every contract or agreement with the municipality in which you have an interest must be approved by council (section 173 of the MGA). So, if your council has delegated purchasing authority to the administration, it is important that those officials know of any business interests that

you have and that you make sure the council approves of any contract with your business. You cannot raise the matter in council, but, if you submit a bid or offer, you can note the matter must receive council approval. If it doesn't, you may be disqualified and the contract has no force or effect.

The following are the only exceptions:

- if the contract or agreement is for the performance of work or the provision of a service in the case of an emergency, or
- if the contract or agreement is for the sale of goods or services to the municipality or to persons contracting with the municipality at competitive prices by a dealer in those goods or services, that is incidental to, or in the ordinary course of business.

Disqualification

Section 174 of the MGA states in part you shall resign your seat if:

- you never were or cease to be qualified for nomination
- you violate the attendance requirements
- you are convicted of a relevant offence
- you do not abstain from voting if required to
- you become an employee of the municipality.

If you do not resign, then an elector of the municipality or the council may apply to a judge for an order determining whether or not you have disqualified yourself (section 175 of the MGA).

The judge may declare you to be disqualified and your seat to be vacated or that you are qualified to remain a member of the council. In certain instances, the judge may also dismiss the application if the judge is of the opinion that the disqualification arose inadvertently or as a result of a genuine error in judgment. If the disqualification is for using information that was used to gain a pecuniary benefit, the judge may order you to pay to the municipality, a sum of damages determined by the court.

If you are found to be disqualified for pecuniary interest disqualification, you may only be a candidate at the next general election if you are then qualified for nomination under the *Local Authorities Election Act* (see section 174(4) of the MGA).

List of Interests

If you have extensive business interests, it may be difficult for you to know when these businesses are dealing with your municipality. It may be even more difficult for purchasing agents to identify a contract which requires the approval of council because a member of council has an interest.

In such cases, it may help everyone involved – yourself included - if a listing of interests is available in the office. Therefore, provision is made for council, by bylaw, to require its members to file a statement with a designated officer showing the names of their immediate families and any business in which they have an interest (section 171 of the MGA).

The designated officer is to compile a list of all the names on the statements and provide it to the officials and employees of the municipality indicated in the bylaw.

This provision is permissive. This means the council has the power to pass such a bylaw if it thinks it is necessary. However, council is not required to do so.

These rules are designed to protect the public interest while ensuring that your ability to work is not adversely affected by your election to council.

In order that the public interest is served and seen to be served, it is important that you be open and honest about dealing with the municipality.

Be fair to yourself, your electors, and your municipality by keeping your private interests in harmony with the public interest.

Remember

- If you vote on a matter in which you have pecuniary interest, you are subject to disqualification, even if you vote against your interest.
- Ask to have your abstention recorded in the minutes and check the minutes to see that it actually has been recorded.
- The rules apply at all meetings of your council and its committees, and at the meetings of any board, commission, committee or agency to which you are appointed as a representative of the council.
- If your council passes a bylaw requiring a listing of interests, keep your list up-to-date by regularly informing the designated officer of additions or deletions.
- If you are in doubt as to whether you have a pecuniary interest, get a letter from your own solicitor giving advice to you.

This guide is an information summary only and has no legislative sanction. For certainty, refer to the *Municipal Government Act*. Copies can be purchased from Alberta Queen's Printer Bookstore:

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10611 – 98 Avenue
Edmonton, Alberta T5K 2P7
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Appendix

***Municipal Government Act* Section 170(3)**

"A councillor does not have a pecuniary interest by reason only of any interest

(a) that the councillor, an employer of the councillor or a member of the councillor's family may have as an elector, taxpayer or utility customer of the municipality,

(b) that the councillor or a member of the councillor's family may have by reason of being appointed by the council as a director of a company incorporated for the purpose of carrying on business for and on behalf of the municipality or by reason of being appointed as the representative of the council on another body,

(c) that the councillor or member of the councillor's family may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor or member of the councillor's family may be entitled by being appointed by the council to a position described in clause (b),

(d) that the councillor may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor may be entitled by being a councillor,

(e) that the councillor or a member of the councillor's family may have by being employed by the Government of Canada, the Government of Alberta or a federal or provincial Crown corporation or agency, except with respect to a matter directly affecting the department, corporation or agency of which the councillor or family member is an employee,

(f) that a member of the councillor's family may have by having an employer, other than the municipality, that is monetarily affected by a decision of the municipality,

(g) that the councillor or a member of the councillor's family may have by being a member or director of a non-profit organization as defined in section 241(f) or a service club,

(h) that the councillor or member of the councillor's family may have

(i) by being appointed as the volunteer chief or other volunteer officer of a fire or ambulance service or emergency measures organization or other volunteer organization or service, or

(ii) by reason of remuneration received as a volunteer member of any of those voluntary organizations or services,

(i) of the councillor, an employer of the councillor or a member of the councillor's family that is held in common with the majority of electors of the municipality or, if the matter affects only part of the municipality, with the majority of electors in that part,

(j) that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor, or

(k) that a councillor may have by discussing or voting on a bylaw that applies to businesses or business activities when the councillor, an employer of the councillor or a member of the councillor's family has an interest in a business, unless the only business affected by the bylaw is the business of the councillor, employer of the councillor or the councillor's family."